

MAR 2 2015 10:15AM

STATE FARM

NO. 210

1-15 P. 115
PS-82IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR COOS COUNTY

37 20m6 416

LUJEAN YOAKAM, A.K.A.
LOU JEAN YOAKAM,

Plaintiff,

vs.

STATE FARM FIRE AND CASUALTY
COMPANY and WELLS FARGO HOME
MORTGAGE, INC., A DIVISION OF
WELLS FARGO BANK, N.A.

Defendants.

Case No. 15CV0087

SUMMONS


TO: STATE FARM FIRE AND CASUALTY COMPANY
Rob Roach, Registered Representative
550 Hawthorne Avenue SE
Salem, OR 97301

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and defend the Complaint filed against you in the above-entitled cause within 30 days from the date of service of this summons on you. If you fail to appear and defend, the Plaintiff will apply to the court for the relief demanded in the Complaint.

NOTICE TO DEFENDANT:
READ THESE PAPERS CAREFULLY

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on Plaintiff's attorney.

If you have any questions, you should see a lawyer immediately. If you need help in finding a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

DATED: 2-24-, 2015.
MANUEL C. HERNANDEZ
OSB No. 874123
P.O. Box 979
1212 Alabama, Suite 14
Bandon, OR 97411
telephone no. (541) 347-2911
fax no. (541) 347-3656

SUMMONS - PAGE 1

MAR. 2. 2015 10:15AM

STATE FARM

NO. 210

P. 2

lawtalk@visitbandon.com
Attorney for Plaintiff

STATE OF OREGON)
) ss.
County of Coos)

I, the undersigned attorney of record for Plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.


Attorney for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual or other legal entity to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.


Attorney for Plaintiff

SUMMONS - PAGE 2

MAR 2 2015 10:15AM

STATE FARM

NO. 210 P. 3

I CERTIFY THIS TO BE
A TRUE COPY

Mon C. Hernandez

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COOS

LUJEAN YOAKAM, A.K.A.
LOU JEAN YOAKAM,

Plaintiff,

vs.

STATE FARM FIRE AND CASUALTY
COMPANY and WELLS FARGO HOME
MORTGAGE, INC., A DIVISION OF
WELLS FARGO BANK, N.A.,

Defendants.

Case No.: 15CV0087

COMPLAINT FOR BREACH
OF CONTRACT/DECLARATORY
AND INJUNCTIVE RELIEF

Claim Amount: \$250,000
and Other Equitable Relief

(Demand for Jury Trial)

First Claim for Relief, Declaratory Judgment/Reformation as to State Farm

PLAINTIFF alleges:

1.

Plaintiff LUJEAN YOAKAM, a/k/a LOU JEAN YOAKAM is a citizen of Coos
County, living at 1895 North Fir Street, Coquille, Oregon 97423.

2.

Defendant STATE FARM FIRE AND CASUALTY COMPANY [hereinafter
"Defendant State Farm"] is an insurance company authorized to do business selling
insurance policies in the State of Oregon.

COMPLAINT FOR BREACH OF CONTRACT/DECLARATORY AND
INJUNCTIVE RELIEF - PAGE 1

HERNANDEZ AND
ASSOCIATES, L.L.C.
Attorneys At Law
1212 Alabaster
Suite #14
P.O. Box 979
Bend, OR 97411
(541) 347-2911
FAX (541) 347-3656

MAR. 2. 2015 10:15AM

STATE FARM

NO. 210 P. 4

3.

Defendant STATE FARM sold Plaintiff a homeowners policy issued in the State of Oregon containing replacement coverage for structural damage to her dwelling many years ago which was at all times material hereto in full force and effect. (EXHIBIT A). A wind and hail storm which occurred on or about June 9, 2013 caused structural damage to the insured's residence at 1895 N. Fir Street, Coquille, Coos County, Oregon. The claim number is 3720M6416.

4.

WELLS FARGO HOME MORTGAGE, INC., A DIVISION OF WELLS FARGO BANK, N.A., [hereinafter "Wells Fargo"] is a national bank authorized to do business in the State of Oregon.

5.

On or about 2002, Defendant WELLS FARGO, after inspecting the residence, contracted with Plaintiff to fund a reverse mortgage. The reverse mortgage loan was issued to Plaintiff and her now deceased husband, Frank Yoakam.

6.

Due to the damage from the June 9, 2013 storm, Plaintiff was forced to move out of the home until repairs can be completed to make the residence habitable.

7.

Due to the old condition of the residence, the sums offered by Defendant State Farm

HERNANDEZ AND
ASSOCIATES, L.L.C.
Attorneys At Law
1212 Alabama
Suite #14
P.O. Box 979
Bend, OR 97411
(541) 347-2911
FAX (541) 347-3656

COMPLAINT FOR BREACH OF CONTRACT/DECLARATORY AND
INJUNCTIVE RELIEF - PAGE 2

MAR. 2. 2015 10:16AM

STATE FARM

NO. 210

P. 5

1 to repair the damage is insufficient to make the residence habitable for Plaintiff to live in.

2 8.

3 The repair project of the Yoakam residence has stalled out because there is
4 insufficient funds being offered by Defendant State Farm to get the work done. Defendant
5 State Farm is threatening to limit loss of use coverage due to the dispute on what repairs
6 Defendant State Farm willing to pay for and what repairs they do not agree to pay. Until
7 recently Plaintiff was living in alternate housing paid for by Defendant State Farm
8 consisting of an old camp trailer in the garage that does not have hot and cold running
9 water and is otherwise not habitable. While the camp trailer was tolerable in the summer
10 months, the camp trailer became intolerable in the winter months. More recently
11 Defendant State Farm was kind enough to put Plaintiff in a better Camp Trailer for
12 alternate housing that is acceptable and Plaintiff requests that the alternate housing now
13 being provided continue until the court hears the case and a determination is made on scope
14 of repairs which will be made on Plaintiff's residence.
15
16
17

18 9.

19 Defendant State Farm has made advance payments to Plaintiff of \$2,125 additional
20 living expenses for 12/1/13 thru 4/30/14; \$1,832.33 to Belfor for services provided in
21 behalf of Plaintiff; and \$18,333.28 to Plaintiff which Plaintiff believed were for loss of
22 personal property because it was issued in Plaintiff's name only. Defendant State Farm
23 thereafter claimed the money should have been payable to Wells Fargo and Plaintiff as and
24 for the actual cash value of structural damage to the Yoakam residence.
25

26
27 COMPLAINT FOR BREACH OF CONTRACT/DECLARATORY AND
28 INJUNCTIVE RELIEF - PAGE 3

BERNANDEZ AND
ASSOCIATES, L.L.C.
Attorneys At Law
212 Alabama
Suite #14
P.O. Box 979
Hood, OR 97431
(541) 347-2911
FAX (541) 347-3696

MAR. 2. 2015 10:16AM

STATE FARM

NO. 210 P. 6

10.

Plaintiff is 77 years old and is legally blind. She cannot see well enough to read her mail. Her deceased husband, Frank Yoakam, previously handled all business matters in their marriage. Frank Yoakam passed away right before the wind and hail storm in question.

11.

Plaintiff has no adequate remedy at law.

12.

In equity the contract should be reformed to carry forth the intents of the parties in providing replacement cost coverage to restore the residence to the habitable condition the Yoakam home was in before the wind and hail storm.

13.

In equity Defendant State Farm should pay the actual cash value of the costs to restore the Yoakam residence to habitable condition and thereafter pay the incremental amounts necessary to replace the Yoakam residence as per replacement value coverage available under the policy.

14.

Alternatively, assuming the court compels Wells Fargo to concur, Defendant State Farm should reform the policy to cover the costs of burning down the Yoakam residence, clearing the debris, and replacing the old Yoakam residence with a modest manufactured home dwelling which will house Plaintiff on her old home site within the coverage offered

HERNANDEZ AND
ASSOCIATES, L.L.C.
Attorneys At Law
1212 Alabama
Suite #14
P.O. Box 970
Hoodoo, OR 97411
(541) 347-2911
FAX (541) 347-3556

COMPLAINT FOR BREACH OF CONTRACT/DECLARATORY AND
INJUNCTIVE RELIEF - PAGE 4

MAR. 2. 2015 10:16AM

STATE FARM

NO. 210 P. 7

1 or which should be offered by Defendant State Farm under the existing replacement policy.

2 15.

3 Plaintiff should be awarded her reasonable attorney fees and costs pre-filing and
4 post filing of this suit as provided by ORS 742.061, and caselaw interpreting this provision
5 in Declaratory Judgment proceedings.
6

7 **Second Claim for Relief: Declaratory Judgment/Reformation as to Wells Fargo**

8 16.

9 Plaintiff re-alleges and incorporates by reference paragraphs 1-11 as though set
10 forth in full herein.
11

12 17.

13 Wells Fargo has sent correspondence to Plaintiff threatening to foreclose on the
14 reverse mortgage on account of Plaintiff has been unable to live in the Yoakam residence
15 due to the said wind and hail storm damage which has forced Plaintiff to vacate the
16 Yoakam residence and live in a camp trailer in a garage on the Yoakam property.
17

18 18.

19 Upon information and belief, Wells Fargo will not agree to allow the uninhabitable
20 Yoakam home to be burned and replaced with a manufactured home.
21

22 19.

23 In equity, the terms of the reverse mortgage should be reformed to allow Yoakam to
24 avoid foreclosure because Plaintiff has not been able to occupy the Yoakam residence for
25 over one year, in violation of a provision in the reverse mortgage agreement.
26

27 **COMPLAINT FOR BREACH OF CONTRACT/DECLARATORY AND**
28 **INJUNCTIVE RELIEF - PAGE 5**

BERNANDEZ AND
ASSOCIATES, L.L.C.
Attorneys At Law
212 Alabama
Suite 814
P.O. Box 279
Bend, OR 97411
(541) 347-2911
FAX (541) 347-3656

MAR. 2. 2015 10:17AM

STATE FARM

NO. 210 P. 8

20.

Any dry rot condition in the Yoakam residence rendering replacement coverage insufficient to restore the home was either not detected in pre-mortgage inspection or not present at the time the residence was inspected for financing by the reverse mortgage or developed subsequent to the date of the reverse mortgage.

21.

The wind and hail storm which rendered the Yoakam residence not habitable was not the fault of either party to the Reverse Mortgage agreement.

22.

Wells Fargo accepted the foreseeable risk that the useful life of the Yoakam residence may be less than the actual lifespan of Plaintiff.

23.

The Coquille Fire Department has agreed to burn the Yoakam residence during as soon as fire danger conditions lessen where it will be safe to burn the residence to facilitate replacement of the Yoakam residence with a manufactured home.

24.

Burning the Yoakam residence and replacing the Yoakam residence with a manufactured home is an acceptable alternative to Plaintiff so long as Defendant State Farm pays off the reverse mortgage or the replacement value of the insured residence notwithstanding the old condition of the residence.

25.

COMPLAINT FOR BREACH OF CONTRACT/DECLARATORY AND
INJUNCTIVE RELIEF - PAGE 6

BERNARDEZ AND
ASSOCIATES, L.L.C.
Attorneys At Law
212 Alabama
Suite #14
P.O. Box 979
Kendall, OR 97411
(541) 347-2911
FAX (541) 347-3636

MAR. 2, 2015 10:17AM

STATE FARM

NO. 210 P. 9

1 Plaintiff is entitled to award of reasonable attorney fees and costs as per the
 2 contractual agreement of the parties; and any applicable Oregon statute.

3 **Third Claim for Relief for Breach of Contract as to Defendant State Farm**

4
 5 26.

6 Plaintiff re-alleges and incorporates by reference paragraphs 1-10 as though set
 7 forth in full herein.

8
 9 27.

10 Defendant State Farm has breached the coverage provisions under the policy to pay
 11 the actual cash value of the damages to the residence caused by storm damage which
 12 rendered the residence un-inhabitable.

13
 14 28.

15 Defendant State Farm has breached the coverage provisions to pay replacement
 16 value of the damages to the residence caused by storm damage which rendered the
 17 residence un-inhabitable.

18
 19 29.

20 Defendant State Farm has breached the coverage provisions to pay sufficient
 21 additional living expenses to allow Plaintiff to rent suitable habitable temporary
 22 replacement housing with hot and cold running water pending reconstruction of the insured
 23 and damaged residence of Plaintiff.

24
 25 30.

26 Defendant State Farm has breached the provision to issue checks intended to be

27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539
 540
 541
 542
 543
 544
 545
 546
 547
 548
 549
 550
 551
 552
 553
 554
 555
 556
 557
 558
 559
 560
 561
 562
 563
 564
 565
 566
 567
 568
 569
 570
 571
 572
 573
 574
 575
 576
 577
 578
 579
 580
 581
 582
 583
 584
 585
 586
 587
 588
 589
 590
 591
 592
 593
 594
 595
 596
 597
 598
 599
 600
 601
 602
 603
 604
 605
 606
 607
 608
 609
 610
 611
 612
 613
 614
 615
 616
 617
 618
 619
 620
 621
 622
 623
 624
 625
 626
 627
 628
 629
 630
 631
 632
 633
 634
 635
 636
 637
 638
 639
 640
 641
 642
 643
 644
 645
 646
 647
 648
 649
 650
 651
 652
 653
 654
 655
 656
 657
 658
 659
 660
 661
 662
 663
 664
 665
 666
 667
 668
 669
 670
 671
 672
 673
 674
 675
 676
 677
 678
 679
 680
 681
 682
 683
 684
 685
 686
 687
 688
 689
 690
 691
 692
 693
 694
 695
 696
 697
 698
 699
 700
 701
 702
 703
 704
 705
 706
 707
 708
 709
 710
 711
 712
 713
 714
 715
 716
 717
 718
 719
 720
 721
 722
 723
 724
 725
 726
 727
 728
 729
 730
 731
 732
 733
 734
 735
 736
 737
 738
 739
 740
 741
 742
 743
 744
 745
 746
 747
 748
 749
 750
 751
 752
 753
 754
 755
 756
 757
 758
 759
 760
 761
 762
 763
 764
 765
 766
 767
 768
 769
 770
 771
 772
 773
 774
 775
 776
 777
 778
 779
 780
 781
 782
 783
 784
 785
 786
 787
 788
 789
 790
 791
 792
 793
 794
 795
 796
 797
 798
 799
 800
 801
 802
 803
 804
 805
 806
 807
 808
 809
 810
 811
 812
 813
 814
 815
 816
 817
 818
 819
 820
 821
 822
 823
 824
 825
 826
 827
 828
 829
 830
 831
 832
 833
 834
 835
 836
 837
 838
 839
 840
 841
 842
 843
 844
 845
 846
 847
 848
 849
 850
 851
 852
 853
 854
 855
 856
 857
 858
 859
 860
 861
 862
 863
 864
 865
 866
 867
 868
 869
 870
 871
 872
 873
 874
 875
 876
 877
 878
 879
 880
 881
 882
 883
 884
 885
 886
 887
 888
 889
 890
 891
 892
 893
 894
 895
 896
 897
 898
 899
 900
 901
 902
 903
 904
 905
 906
 907
 908
 909
 910
 911
 912
 913
 914
 915
 916
 917
 918
 919
 920
 921
 922
 923
 924
 925
 926
 927
 928
 929
 930
 931
 932
 933
 934
 935
 936
 937
 938
 939
 940
 941
 942
 943
 944
 945
 946
 947
 948
 949
 950
 951
 952
 953
 954
 955
 956
 957
 958
 959
 960
 961
 962
 963
 964
 965
 966
 967
 968
 969
 970
 971
 972
 973
 974
 975
 976
 977
 978
 979
 980
 981
 982
 983
 984
 985
 986
 987
 988
 989
 990
 991
 992
 993
 994
 995
 996
 997
 998
 999
 1000

COMPLAINT FOR BREACH OF CONTRACT/DECLARATORY AND
 INJUNCTIVE RELIEF - PAGE 7

BERNANDEZ AND
 ASSOCIATES, L.L.C.
 Attorneys At Law
 1222 Alhambra
 Suite #14
 P.O. Box 979
 Bend, OR 97411
 (541) 347-2911
 FAX (541) 347-3656

MAR. 2. 2015 10:17AM

STATE FARM

NO. 210 P. 10

1 applied to residential repairs in joint names of Defendant Wells Fargo as holder of the
 2 mortgage and Plaintiff, and has issued at least one payment in the approximate sum of
 3 \$18,000 in the name of Plaintiff only, which lead Plaintiff to assume the payment was for
 4 Plaintiff's loss of personal property. Thereafter, Defendant State Farm has delayed or
 5 refused to continue with the repairs until such time as the \$18,000 was reimbursed to
 6 Defendant State Farm.

8 31.

9 Plaintiff should be awarded her reasonable attorney fees and costs pre-filing and
 10 post filing of this suit as provided by ORS 742.061.

12 32.

13 WHEREFORE, Plaintiff prays for judgment:

- 14 1. First Claim - A declaration that Plaintiff has no adequate remedy at law; that the
 15 losses caused by the storm are covered losses under the policy; declare that the
 16 contract should be reformed to meet the reasonable expectations of the parties
 17 contracting for a homeowner policy, that Defendant State Farm does not have the
 18 right to a house in reasonable condition; that Defendant State Farm undertook to
 19 provide replacement coverage without regard to it's age or condition and whether
 20 the construction met building code requirements, and contractually undertook by
 21 collecting premiums for many years for replacement coverage, is obligated to pay
 22 for replacement coverage; and structuring payments to contractors upon completion
 23 to avoid requiring Plaintiff, an elderly disabled insured, from having to first pay the

26 BERNANDEZ AND
 ASSOCIATES, L.L.C.
 Attorneys At Law
 2112 Alhambra
 Suite #14
 SO. Box 979
 Jackson, OR 97431
 (541) 347-2911
 FAX (541) 347-3656

27 COMPLAINT FOR BREACH OF CONTRACT/DECLARATORY AND
 28 INJUNCTIVE RELIEF - PAGE 8

MAR. 2. 2015 10:18AM

STATE FARM

NO. 210 P. 11

1 additional cost of replacement coverage and thereafter seeking reimbursement from
2 Defendant State Farm; and awarding reasonable attorney fees and costs of suit.

3
4 2. Second Claim - A declaration that Plaintiff has no adequate remedy at law; that the
5 reverse mortgage has not been breached by Plaintiff because Plaintiff has been
6 unable to live in the house; that Plaintiff may continue to live off premises until a
7 habitable abode is available for Plaintiff after trial and decision by the Court on the
8 merits of the scope of coverage due Plaintiff under the provisions of her home
9 owner's policy with Defendant State Farm; and awarding reasonable attorney fees
10 and costs of suit.

11
12 3. Third Claim - A declaration that Plaintiff has no adequate remedy at law; that
13 Defendant State Farm has breached the coverage provisions under the policy to pay
14 the actual cash value of the damages to the residence caused by storm damage
15 which rendered the residence un-inhabitable; has breached the coverage provisions
16 to pay replacement value of the damages to the residence caused by storm damage
17 which rendered the residence un-inhabitable;
18 has breached the coverage provisions to pay sufficient additional living expenses to
19 allow Plaintiff to rent suitable habitable temporary replacement housing with hot
20 and cold running water pending reconstruction of the insured and damaged
21 residence of Plaintiff; and has breached the provision to issue checks intended to be
22 applied to residential repairs in joint names of Defendant Wells Fargo as holder of
23 the mortgage and Plaintiff; and has issued at least one payment in the approximate
24
25

26
27
28
BERNANDEZ AND
ASSOCIATES, L.L.C.
Attorneys At Law
212 Alabama
Suite #14
P.O. Box 979
London, OR 97411
(541) 547-2917
FAX (541) 347-3656

COMPLAINT FOR BREACH OF CONTRACT/DECLARATORY AND
INJUNCTIVE RELIEF - PAGE 9

MAR. 2 2015 10:18AM

STATE FARM

NO. 210 P. 12

1 sum of \$18,000 in the name of Plaintiff only, which lead Plaintiff to assume the
 2 payment was for Plaintiff's loss of personal property; that thereafter, Defendant
 3 State Farm has delayed or refused to continue with the repairs until such time as the
 4 \$18,000 was reimbursed to Defendant State Farm; and awarding reasonable
 5 attorney fees and costs of suit.
 6

7 DATED this 3 day of February, 2015.

8 HERNANDEZ & ASSOCIATES, LLC

9
 10
 11 By: 

12 Manuel C. Hernandez, OSB #874123

13 Attorney for Plaintiff

14 P.O. Box 979

15 Bandon, OR 97411

16 (541) 347-2911

17 Fax: (541) 347-3656

18 Email: lawtalk@visithandon.com
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

HERNANDEZ AND
 ASSOCIATES, L.L.C.
 Attorneys at Law
 1212 Adams
 Suite #14
 P.O. Box 979
 Bandon, OR 97411
 (541) 347-2911
 FAX (541) 347-3656

COMPLAINT FOR BREACH OF CONTRACT/DECLARATORY AND
 INJUNCTIVE RELIEF - PAGE 10

MAR. 2 2015 10:18AM

STATE FARM

NO. 210 P. 13

TABLE OF CONTENTS**DECLARATIONS**

Your Name
 Location of Your Residence
 Policy Period
 Coverages
 Limits of Liability
 Deductibles

Begins on Page

DECLARATIONS CONTINUED	1
DEFINITIONS	1
SECTION I - YOUR PROPERTY	
COVERAGES	3
Coverage A - Dwelling	3
Coverage B - Personal Property	3
Coverage C - Loss of Use	4
Additional Coverages	5
Inflation Coverage	7
LOSSES INSURED	7
LOSSES NOT INSURED	9
LOSS SETTLEMENT	11
CONDITIONS	13
SECTION II - YOUR LIABILITY	
COVERAGES	15
Coverage L - Personal Liability	15
Coverage M - Medical Payments to Others	15
Additional Coverages	16
EXCLUSIONS	16
CONDITIONS	19
SECTION I AND SECTION II - CONDITIONS	20
OPTIONAL POLICY PROVISIONS	21

FP-7965 OR

Includes copyrighted material of State Farm Fire and Casualty Company.
 Copyright, State Farm Fire and Casualty Company, 1995, 1992.

Printed in U.S.A.

EXHIBITA**PAGE #**1

MAR. 2. 2015 10:19AM

STATE FARM

NO. 210

P. 14

HOMEOWNERS POLICY**DECLARATIONS CONTINUED**

We agree to provide the insurance described in this policy;

1. based on your payment of premium for the coverages you chose;
2. based on your compliance with all applicable provisions of this policy; and
3. in reliance on your statements in these **Declarations**.

You agree, by acceptance of this policy, that:

1. you will pay premiums when due and comply with the provisions of the policy;
2. the statements in these **Declarations** are your statements and are true;

3. we insure you on the basis your statements are true; and

4. this policy contains all of the agreements between you and us and any of our agents.

Unless otherwise indicated in the application, you state that during the three years preceding the time of your application for this insurance your Loss History and Insurance History are as follows:

1. Loss History: you have not had any losses, insured or not; and
2. Insurance History: you have not had any insurer or agency cancel or refuse to issue or renew similar insurance to you or any household member.

DEFINITIONS**(INCLUDING PROVISIONS POTENTIALLY RESTRICTING OR ABRIDGING THE RIGHTS OF THE INSURED)**

"You" and "your" mean the "named insured" shown in the **Declarations**. Your spouse is included if a resident of your household. "We", "us" and "our" mean the Company shown in the **Declarations**.

Certain words and phrases are defined as follows:

1. "bodily injury" means physical injury, sickness, or disease to a person. This includes required care, loss of services and death resulting therefrom.

Bodily injury does not include:

- a. any of the following which are communicable: disease, bacteria, parasite, virus, or other organism, any of which are transmitted by any insured to any other person;
- b. the exposure to any such disease, bacteria, parasite, virus, or other organism by any insured to any other person; or
- c. emotional distress, mental anguish, humiliation, mental distress, mental injury, or any similar injury unless it arises out of actual physical injury to some person.

2. "business" means a trade, profession or occupation. This includes farming.

3. "Declarations" means the policy **Declarations**, any amended **Declarations**, the most recent renewal notice or certificate, an Evidence of Insurance form or any endorsement changing any of these.

4. "insured" means you and, if residents of your household:

- a. your relatives; and
- b. any other person under the age of 21 who is in the care of a person described above.

Under Section II, "insured" also means:

- c. with respect to animals or watercraft to which this policy applies, the person or organization legally responsible for them. However, the animal or watercraft must be owned by you or a person included in 4.a. or 4.b. A person or organization using or having custody of these animals or watercraft in the course of a business, or without permission of the owner, is not an insured; and

FP-7885 OR

EXHIBIT

A

PAGE #

2

MAR. 2. 2015 10:19AM

STATE FARM

NO. 210

P. 15

- d. with respect to any vehicle to which this policy applies, any person while engaged in your employment or the employment of a person included in 4.a. or 4.b.
5. "insured location" means:
- the residence premises;
 - the part of any other premises, other structures and grounds used by you as a residence. This includes premises, structures and grounds you acquire while this policy is in effect for your use as a residence;
 - any premises used by you in connection with the premises included in 5.a. or 5.b.;
 - any part of a premises not owned by an insured but where an insured is temporarily residing;
 - land owned by or rented to an insured on which a one or two family dwelling is being constructed as a residence for an insured;
 - individual or family cemetery plots or burial vaults owned by an insured;
 - any part of a premises occasionally rented to an insured for other than business purposes;
 - vacant land owned by or rented to an insured. This does not include farm land; and
 - farm land (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations.
6. "motor vehicle", when used in Section II of this policy, means:
- a motorized land vehicle designed for travel on public roads or subject to motor vehicle registration. A motorized land vehicle in dead storage on an insured location is not a motor vehicle;
 - a trailer or semi-trailer designed for travel on public roads and subject to motor vehicle registration. A boat, camp, home or utility trailer not being towed by or carried on a vehicle included in 6.a. is not a motor vehicle;
 - a motorized golf cart, snowmobile, motorized bicycle, motorized tricycle, all-terrain vehicle or any other similar type equipment owned by an insured and designed or used for recreational or utility purposes off public roads, while off an insured location. A motorized golf cart while used for golfing purposes is not a motor vehicle; and
 - any vehicle while being towed by or carried on a vehicle included in 6.a., 6.b. or 6.c.
7. "occurrence", when used in Section II of this policy, means an accident, including exposure to conditions, which results in:
- bodily injury; or
 - property damage;
- during the policy period. Repeated or continuous exposure to the same general conditions is considered to be one occurrence.
8. "property damage" means physical damage to or destruction of tangible property, including loss of use of this property. Theft or conversion of property by any insured is not property damage.
9. "residence employee" means an employee of an insured who performs duties, including household or domestic services, in connection with the maintenance or use of the residence premises. This includes employees who perform similar duties elsewhere for you. This does not include employees while performing duties in connection with the business of an insured.
10. "residence premises" means:
- the one, two, three or four-family dwelling, other structures and grounds; or
 - that part of any other building;
- where you reside and which is shown in the Declarations.

EXHIBIT A

PAGE # 3

MAR. 2. 2015 10:19AM

STATE FARM

NO. 210

P. 16

SECTION I - COVERAGES

COVERAGE A - DWELLING (INCLUDING PROVISIONS POTENTIALLY RESTRICTING OR ABRIDGING THE RIGHTS OF THE INSURED)

1. **Dwelling.** We cover the dwelling used principally as a private residence on the residence premises shown in the Declarations.

Dwelling includes:

- a. structures attached to the dwelling;
 - b. materials and supplies located on or adjacent to the residence premises for use in the construction, alteration or repair of the dwelling or other structures on the residence premises;
 - c. foundation, floor slab and footings supporting the dwelling; and
 - d. wall-to-wall carpeting attached to the dwelling.
2. **Dwelling Extension.** We cover other structures on the residence premises, separated from the dwelling by clear space. Structures connected to the dwelling by only a fence, utility line, or similar connection are considered to be other structures.

We do not cover other structures:

- a. not permanently attached to or otherwise forming a part of the realty;
 - b. used in whole or in part for business purposes; or
 - c. rented or held for rental to a person not a tenant of the dwelling, unless used solely as a private garage.
3. **Property Not Covered.** We do not cover:
 - a. land, including the land necessary to support any Coverage A property;
 - b. any costs required to replace, rebuild, stabilize, or otherwise restore the land; or
 - c. the costs of repair techniques designed to compensate for or prevent land instability to any property, whether or not insured under Coverage A.

COVERAGE B - PERSONAL PROPERTY (INCLUDING PROVISIONS POTENTIALLY RESTRICTING OR ABRIDGING THE RIGHTS OF THE INSURED)

1. **Property Covered.** We cover personal property owned or used by an insured while it is anywhere in the world. This includes structures not permanently attached to or otherwise forming a part of the realty. At your request, we will cover personal property owned by others while the property is on the part of the residence premises occupied exclusively by an insured. At your request, we will also cover personal property owned by a guest or a residence employee, while the property is in any other residence occupied by an insured.

We cover personal property usually situated at an insured's residence, other than the residence premises, for up to \$1,000 or 10% of the Coverage B limit, whichever is greater. This limitation does not apply to personal property in a newly acquired principal residence for the first 30 days after you start moving the property there. If the residence premises is a newly acquired principal residence, personal property in your immediate past principal residence is not subject to this limitation for the first 30 days after the inception of this policy.

Special Limits of Liability. These limits do not increase the Coverage B limit. The special limit for each of the following categories is the total limit for each loss for all property in that category:

- a. \$200 on money, coins and medals, including any of these that are a part of a collection, and bank notes;
- b. \$1,000 on property used or intended for use in a business, including merchandise held as samples or for sale or for delivery after sale, while on the residence premises. This coverage is limited to \$250 on such property away from the residence premises.

Electronic data processing system equipment or the recording or storage media used with that equipment is not included under this coverage;

EXHIBIT

A

PAGE #

4

MAR 2 2015 10:20AM

STATE FARM

NO. 210

P. 17

- c. \$1,000 on securities, checks, cashier's checks, traveler's checks, money orders and other negotiable instruments, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports and tickets;
 - d. \$1,000 on watercraft of all types and outboard motors, including their trailers, furnishings and equipment;
 - e. \$1,000 on trailers not used with watercraft;
 - f. \$2,500 on stamps, trading cards and comic books, including any of these that are a part of a collection;
 - g. \$2,500 for loss by theft of firearms;
 - h. \$2,500 for loss by theft of silverware and goldware;
 - i. \$5,000 on electronic data processing system equipment and the recording or storage media used with that equipment. There is no coverage for said equipment or media while located away from the residence premises except when said equipment or media are removed from the residence premises for the purpose of repair, servicing or temporary use. An insured student's equipment and media are covered while at a residence away from home; and
 - j. \$5,000 on any one article and \$10,000 in the aggregate for loss by theft of any rug, carpet (except wall-to-wall carpet), tapestry, wall-hanging or other similar article.
2. **Property Not Covered.** We do not cover:
- a. articles separately described and specifically insured in this or any other insurance;
 - b. animals, birds or fish;
 - c. any engine or motor propelled vehicle or machine, including the parts, designed for movement on land. We do cover those not licensed for use on public highways which are:
 - (1) used solely to service the insured location; or
 - (2) designed for assisting the handicapped;
 - d. devices or instruments for the recording or reproduction of sound permanently attached to an

engine or motor propelled vehicle. We do not cover tapes, wires, records or other mediums that may be used with these devices or instruments while in the vehicle;

- e. aircraft and parts;
- f. property of roomers, boarders, tenants and other residents not related to an insured. We do cover property of roomers, boarders and other residents related to an insured;
- g. property regularly rented or held for rental to others by an insured. This exclusion does not apply to property of an insured in a sleeping room rented to others by an insured;
- h. property rented or held for rental to others away from the residence premises;
- i. any citizens band radios, radio telephones, radio transceivers, radio transmitters, radar or laser detectors, antennas and other similar equipment permanently attached to an engine or motor propelled vehicle;
- j. books of account, abstracts, drawings, card index systems and other records. This exclusion does not apply to any recording or storage media for electronic data processing. We will cover the cost of blank books, cards or other blank material plus the cost of labor you incur for transcribing or copying such records; or
- k. recording or storage media for electronic data processing that cannot be replaced with other of like kind and quality on the current retail market.

COVERAGE C - LOSS OF USE (INCLUDING PROVISIONS POTENTIALLY RESTRICTING OR ABRIDGING THE RIGHTS OF THE INSURED)

1. **Additional Living Expense.** When a Loss Insured causes the residence premises to become uninhabitable, we will cover the necessary increase in cost you incur to maintain your standard of living for up to 24 months. Our payment is limited to incurred costs for the shortest of: (a) the time required to repair or replace the premises; (b) the time required for your household to settle elsewhere; or (c) 24 months. This coverage is not reduced by the expiration of this policy.

FP-7055 CR

EXHIBIT

A

PAGE #

5

MAR. 2. 2015 10:20AM

STATE FARM

NO. 210

P. 18

2. **Fair Rental Value.** When a Loss Insured causes that part of the residence premises rented to others or held for rental by you to become uninhabitable, we will cover its fair rental value. Payment shall be for the shortest time required to repair or replace the part of the premises rented or held for rental, but not to exceed 12 months. This period of time is not limited by expiration of this policy. Fair rental value shall not include any expense that does not continue while that part of the residence premises rented or held for rental is uninhabitable.

3. **Prohibited Use.** When a civil authority prohibits your use of the residence premises because of direct damage to a neighboring premises by a Loss Insured, we will cover any resulting Additional Living Expense and Fair Rental Value. Coverage is for a period not exceeding two weeks while use is prohibited.

We do not cover loss or expense due to cancellation of a lease or agreement.

SECTION 1 - ADDITIONAL COVERAGES (INCLUDING PROVISIONS POTENTIALLY RESTRICTING OR ABRIDGING THE RIGHTS OF THE INSURED)

The following Additional Coverages are subject to all the terms, provisions, exclusions and conditions of this policy.

1. **Debris Removal.** We will pay the reasonable expenses you incur in the removal of debris of covered property damaged by a Loss Insured. This expense is included in the limit applying to the damaged property.

When the amount payable for the property damage plus the debris removal exceeds the limit for the damaged property, an additional 5% of that limit is available for debris removal expense. This additional amount of insurance does not apply to Additional Coverage, item 3, Trees, Shrubs and Other Plants.

We will also pay up to \$500 in the aggregate for each loss to cover the reasonable expenses you incur in the removal of tree debris from the residence premises when the tree has caused a Loss Insured to Coverage A property.

2. **Temporary Repairs.** If damage is caused by a Loss Insured, we will pay the reasonable and necessary cost you incur for temporary repairs to covered property to protect the property from further immediate

damage or loss. This coverage does not increase the limit applying to the property being repaired.

3. **Trees, Shrubs and Other Plants.** We cover outdoor trees, shrubs, plants or lawns, on the residence premises, for direct loss caused by the following: Fire or lightning, Explosion, Riot or civil commotion, Aircraft, Vehicles (not owned or operated by a resident of the residence premises), Vandalism or malicious mischief or Theft.

The limit for this coverage, including the removal of debris, shall not exceed 5% of the amount shown in the Declarations for COVERAGE A - DWELLING. We will not pay more than \$500 for any one outdoor tree, shrub or plant, including debris removal expense. This coverage may increase the limit otherwise applicable. We do not cover property grown for business purposes.

4. **Fire Department Service Charge.** We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges. This means charges incurred when the fire department is called to save or protect covered property from a Loss Insured. No deductible applies to this coverage. This coverage may increase the limit otherwise applicable.

5. **Property Removed.** Covered property, while being removed from a premises endangered by a Loss Insured, is covered for any accidental direct physical loss. This coverage also applies to the property for up to 30 days while removed. We will also pay for reasonable expenses incurred by you for the removal and return of the covered property. This coverage does not increase the limit applying to the property being removed.

6. **Credit Card, Bank Fund Transfer Card, Forgery and Counterfeit Money.**

a. We will pay up to \$1,000 for:

(1) the legal obligation of an insured to pay because of the theft or unauthorized use of credit cards and bank fund transfer cards issued to, or registered in an insured's name. If an insured has not complied with all terms and conditions under which the cards are issued, we do not cover use by an insured or anyone else;

FF-7555 OR

EXHIBIT A
PAGE # 6

MAR. 2 2015 10:21AM

STATE FARM

NO. 210

P. 19

(2) loss to an insured caused by forgery or alteration of any check or negotiable instrument; and

(3) loss to an insured through acceptance in good faith of counterfeit United States or Canadian paper currency.

No deductible applies to this coverage.

We will not pay more than the limit stated above for forgery or alteration committed by any one person. This limit applies when the forgery or alteration involves one or more instruments in the same loss.

b. We do not cover loss arising out of business pursuits or dishonesty of an insured.

c. Defense:

(1) We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend claims or suits ends when the amount we pay for the loss equals our limit of liability.

(2) If claim is made or a suit is brought against an insured for liability under the Credit Card or Bank Fund Transfer Card coverage, we will provide a defense. This defense is at our expense by counsel of our choice.

(3) We have the option to defend at our expense an insured or an insured's bank against any suit for the enforcement of payment under the Forgery coverage.

7. **Power Interruption.** We cover accidental direct physical loss caused directly or indirectly by a change of temperature which results from power interruption that takes place on the residence premises. The power interruption must be caused by a Loss Insured occurring on the residence premises. The power lines off the residence premises must remain energized. This coverage does not increase the limit applying to the damaged property.

8. **Refrigerated Products.** Coverage B is extended to cover the contents of deep freeze or refrigerated units on the residence premises for loss due to power failure or mechanical failure. If mechanical failure or power failure is known to you, all reasonable means must be used to protect the property insured from fur-

ther damage or this coverage is void. Power failure or mechanical failure shall not include:

- a. removal of a plug from an electrical outlet; or
- b. turning off an electrical switch unless caused by a Loss Insured.

This coverage does not increase the limit applying to the damaged property.

9. **Arson Reward.** We will pay \$1,000 for information which leads to an arson conviction in connection with a fire loss to property covered by this policy. This coverage may increase the limit otherwise applicable. However, the \$1,000 limit shall not be increased regardless of the number of persons providing information.

10. **Volcanic Action.** We cover direct physical loss to a covered building or covered property contained in a building resulting from the eruption of a volcano when the loss is directly and immediately caused by:

- a. volcanic blast or airborne shock waves;
- b. ash, dust or particulate matter; or
- c. lava flow.

We will also pay for the removal of that ash, dust or particulate matter which has caused direct physical loss to a covered building or covered property contained in a building.

One or more volcanic eruptions that occur within a 72-hour period shall be considered one volcanic eruption.

This coverage does not increase the limit applying to the damaged property.

11. **Collapse.** We insure only for direct physical loss to covered property involving the sudden, entire collapse of a building or any part of a building.

Collapse means actually fallen down or fallen into pieces. It does not include settling, cracking, shrinking, bulging, expansion, sagging or bowing.

The collapse must be directly and immediately caused only by one or more of the following:

- a. perils described in SECTION I - LOSSES INSURED, COVERAGE B - PERSONAL PROPERTY. These perils apply to covered building and

FP-7655 OR

EXHIBIT

A

PAGE #

2